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VIA HAND-DELIVERY

Sanford M. Speight, Acting Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
2nd Floor, West Tower
Washington, DC 20005

Re: Case No. 1011

Dear Mr. Speight:

Please find enclosed an original and fifteen copies of AT&T Communications of Washington, DC, L.L.C.'s Post Hearing Brief (Public Version) in the above-referenced case.

Very truly yours,

Mark A. Keffer

Enclosures

cc: Service List

DC12

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF	)	
VERIZON WASHINGTON DC, INC.'S	)	
COMPLIANCE WITH THE CONDITIONS	)	**Formal Case No. 1011**
ESTABLISHED IN SECTION 271	)	
OF THE FEDERAL	)	
TELECOMMUNICATIONS ACT OF 1996	)	

POST HEARING BRIEF OF AT&T COMMUNICATIONS OF WASHINGTON, D.C. L.L.C.

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Dated: December 6, 2002

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POST HEARING BRIEF OF AT&T COMMUNICATIONS OF WASHINGTON, D.C. L.L.C.

I. Introduction and Summary

Before this Commission considers endorsing Verizon's 271 application to the FCC, it will want to ensure that conditions are in place to extend competitive local telephone service to all reaches of the District, including to the residential consumers still waiting for it to arrive some seven years after passage of the Telecommunications Act. This brief sets forth specific pre-conditions Verizon should be directed to meet before this Commission will endorse any 271 application. The Commission's Order in this proceeding should specify that it will not provide a positive consultative report to the FCC unless and until Verizon provides a commitment to the Commission, in writing, executed by an officer of company qualified to bind the company, that

- First and foremost, Verizon DC will implement the UNE rates decided by this Commission in Formal Case No. 962 and will not seek to increase them in any petition for reconsideration or appeal;
- Verizon will not challenge this Commission's authority to implement a Performance Assurance Plan;
- Verizon will not deny any CLEC's request to implement the same interconnection provisions established for Verizon Virginia in the FCC's

Virginia Arbitration Non-Price Order and the subsequent interconnection agreement approved by the FCC (in other words, Verizon DC cannot demand that any CLEC accept Verizon's "GRIP" provision if the CLEC does not want it);

- Verizon DC will note on its website when there is "discounted" collocation space available at a central office, will provide quarterly updates to CLECs who have returned space, will implement a Method and Procedure to prioritize re-assignment of CLEC returned space and streamline the crediting process, and will use a 30 year amortization period to calculate credits due to a vacating CLEC and the "discounted" price to a subsequent CLEC.
- Verizon will not oppose Commission action to monitor and review Verizon's "no build" policy for UNEs, to examine whether Verizon's UNE and special access pricing should be unified, and to examine whether Verizon should be required to adhere to metrics and a Performance Assurance Plan for its provision of special access services;
- Verizon will not deny any CLEC's request to implement the same dark fiber provisions established for Verizon Virginia in the FCC's *Virginia Arbitration Non-Price Order* and the interconnection agreement approved by the FCC (in other words, Verizon DC cannot demand that any CLEC accept alternate dark fiber terms and conditions if the CLEC does not want them);
- Verizon will permit CLECs to order Enhanced Extended Loops (EELs) in a coordinated manner that ensures billing for both the loop and transport portions will not begin until the EEL is provisioned and operational, even if the loop and transport portions operate at different speeds;
- Verizon will pay AT&T reciprocal compensation that is due and owing, plus accumulated interest,
- Verizon will not oppose the establishment of a Commission review of its directory listings processes, and will not charge CLECs for Directory Listing Inquiries, and
- Verizon will assist staff in replicating Carrier-to-Carrier ("C2C") Metrics in the District of Columbia, either directly or with third party assistance, and will publish the Metrics Business Rules for the District of Columbia.

II. The District of Columbia has Virtually No Residential Local Exchange Competition.

Competition results in lower prices, more efficient deployment of resources, and improved customer service. Congress enacted the Telecommunications Act of 1996 in an effort to bring these benefits of competition to local exchange telephone service, a service that has essentially been provided on a monopoly basis for over a century.

While a number of states are beginning to see increasing levels of local telephone competition in residential markets, the District of Columbia is not among them. At the same time Verizon claims CLECs have an aggregate 17% market share in the District, it readily admits that almost all CLEC activity is aimed at business customers.[1] By Verizon's own count, CLECs are serving only 25,000 residential customers,[2] a tiny fraction of the more than 295,000 residential access lines Verizon had in service at the end of 2001.[3]

Even that tiny CLEC fraction is overstated, however, for several reasons. For one thing, Verizon's claim that AT&T serves residential customers in the District is demonstrably false. After an exhaustive investigation, AT&T determined that the AT&T "residential" customers Verizon had identified are, in fact, AT&T business customers.[4] Verizon's errors in this regard strongly suggest that it has overstated other carriers' residential customer counts as well. Beyond that, there is ample evidence that the method

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1 Johns Declaration (Verizon Exh. A) at ¶¶ 6-7.

2 Id. at ¶ 7.

3 Verizon DC ARMIS reports to the FCC. Report 43-01; Table IIa, rows 2100, 2110. (available at www.fcc.gov)

4 Tr. at 355-357; 412-413; *AT&T Response to Verizon Claims that AT&T Presently Serves Residential Customers in the District of Columbia*, November 22, 2002.

Verizon uses to estimate the number of residential customers – specifically, the use of data extracted from the E911 database – does not yield accurate results and, indeed, overstates the number of CLEC customers.[5] Moreover, Verizon's claims that a number of residential customers are being served through resale arrangements[6] fails to reveal that resale is on the decline, both in the District[7] and across the entire Verizon footprint.[8] Suffice it to say, these facts prove that residential competition has not yet come to the District, at least not in any appreciable way.

District consumers deserve better. The best and fastest way to stimulate residential competition is with the "Unbundled Network Element Platform" (or "UNE-P"), but to date Verizon's rates for unbundled network elements have been too high to attract CLECs into the market. At a time when CLECs across the nation are serving nearly 11 million customers on a UNE-P basis[9] (a number which even Verizon projects will continue growing at a rapid pace[10]), very few of those customers reside in the District. Verizon's own data show that it was furnishing CLECs with only about 2,900 UNE-P arrangements as of June, 2000, some 12% <u>fewer</u> than the month before.[11]

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5 Tr. at 392-395; OPC witness Selwyn Declaration (OPC Exh. A) at ¶¶ 18-21.

6 Johns Declaration (Verizon Exh. A) at ¶ 7.

7 AT&T Exh. 3. This shows that the number of resale arrangements provided by Verizon DC declined by more than 10% in the fist six months of 2002.

8 Verizon CEO Ivan Seidenberg October 1, 2002 presentation to Goldman Sachs (AT&T Exh. 4) at p. 5 (showing a 33% drop in resale lines from 1Q01 to 2Q02.

9 *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, letter to FCC Commissioners from AT&T General Counsel James Cicconi, November 13, 2002, at 2.

10 AT&T Exh. 11, at p. 5.

11 AT&T Exh. 5.

Nearly all are being provided in the business-oriented "downtown" wire centers, and virtually none in the "residential" parts of the city.[12]

This Commission has the authority to improve the level of residential competition in the District. Although Section 251(d)(2)(B) of the Telecommunications Act invites each state commission to consult with the FCC on whether the Regional Bell Operating Company in that state has met the requirements of the Act's "14 point checklist" of market-opening requirements, nothing in the federal Act precludes a state commission from conducting any additional inquiry it deems necessary to determine whether local exchange competition is developing in a manner the state commission deems appropriate and in the public interest for that state.

Separate and apart from any obligations imposed by federal law, this Commission has an independent duty under District law to "facilitate entry into the District for providers of all forms of telecommunications service in order to foster the availability of competitive telecommunications options to consumers in the District. . . " *District of Columbia Code* § 2002(b). In furtherance of that goal, the Commission is required to ensure that Verizon "unbundle[s] each network element and shall make those network elements available under nondiscriminatory terms and conditions filed with the PSC, including cost-based prices. . . " *District of Columbia Code*, § 2002(h)(3). In fulfilling these duties, the Commission has broad power and discretion to ensure that the interests of District consumers are served. It has the power, "upon its own initiative or upon reasonable complaint" to determine whether "rates, tolls, charges, or schedules, or services . . . are in any respect unreasonable or unjustly discriminatory" and to "make

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12 *Id.*

such investigation as it may deem necessary." *District of Columbia Code*, § 34-908. Thus, whatever the FCC's expectations of this Commission under the federal Telecommunications Act, this Commission has an independent obligation, under District of Columbia law, to ensure that local exchange competition is developing in all parts of the District in ways that meet the needs of District consumers. Where this Commission determines that additional actions are required to open the District of Columbia's local exchange markets to competition, this Commission has clear authority under the District of Columbia Code to direct Verizon to undertake those actions.

III. This Commission Should Not Endorse Verizon's § 271 Application to the FCC Unless and Until Verizon Fully Complies With All Checklist Item Conditions.

A. CHECKLIST ITEM 2 (UNE Pricing): The Establishment of UNE Rates That Will Facilitate Competition Is the Most Critical Telecommunications Issue Facing the Commission.

The reason that CLECs have not been able to serve residential customers in the District of Columbia is no great mystery. As in many regulatory proceedings, it boils down to an issue of price. The Telecommunications Act of 1996, and subsequent FCC rules and court decisions, require that the rates for unbundled network elements be established according to "TELRIC" principles, meaning that rates must be based on Total Element Long Run Incremental Costs.

The initial UNE prices established by state regulators, including the FCC "default" rates utilized by this Commission,[13] did not result in an avalanche of local

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13 This Commission established interim UNE rates based on "default" rates identified in the FCC's August 8, 1996 *Competition Order* in Docket 96-98. *See Telecommunications Arbitration Case 6, Arbitration Decision*, November 8, 1996. Those rates have not been reduced since that time.

exchange competition, or anything close to it. In the past few months, however, a number of state regulators, most recently New Jersey in the Verizon footprint,[14] have revisited their initial UNE pricing decisions. In many instances commissions have found that UNE costs have fallen and, accordingly, have reduced UNE rates for the incumbent Bell Operating Company. In those states, CLECs are entering the market and offering competitive local exchange services to both business and residential consumers. In New York, for example, the Public Service Commission reduced Verizon's UNE rates effective January, 2002, and CLECs now serve more than 2 million UNE-P customers, including a number of residential customers.[15] Earlier this year, the New Jersey Board of Public Utilities reduced Verizon New Jersey's UNE rates by approximately 40%[16] and, shortly thereafter, AT&T announced that it would be offering service to consumers throughout that state.[17] Nationwide, data reported to the FCC shows that by year end CLECs will be serving almost 11 million residential and small businesses using UNE-P arrangements.[18] Few residential consumers in the District, however, will not be included in that count.

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14 New Jersey Board of Public Utilities, Docket No. TO00060356, *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic – New Jersey, Inc.*, Decision and Order, March 6, 2002; Order on Reconsideration, September 13, 2002.

15 New York Public Service Commission Case No. 98-C-1357, Order issued and effective January 28, 2002.

16 New Jersey Board of Public Utilities, Docket No. TO00060356, *In the Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic – New Jersey, Inc.*, Decision and Order, March 6, 2002; Order on Reconsideration, September 13, 2002.

17 July 15, 2002, "AT&T To Offer Residential Local Service in New Jersey Later This Summer."

18 *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local*

Checklist item 2 requires that Verizon provide unbundled network elements at TELRIC-compliant rates. Verizon DC's existing rates do not meet that standard, but the Commission is expected to remedy that shortcoming in Formal Case 962.

For its part, Verizon can be expected to challenge any reduction in UNE rates that makes UNE-P competition feasible. Verizon CEO Ivan Seidenberg has called UNE-P a "destructive policy" endorsed only by state commissions who, in his view, "don't get it" and "don't have a clue. . . ."[19]

Given Verizon's attitude towards reduced UNE rates in general, and its distaste for UNE-P in particular, this Commission needs to be sure that the UNE rates it deems appropriate for the District – and, indeed, the UNE rates on which Verizon will rely to gain 271 approval – are, in fact, the UNE rates that Verizon offers to CLECs in the long term. The best way to accomplish this goal is to require Verizon to accept the Commission's UNE rate decision as a necessary precondition of this Commission's issuance of a positive consultative report to the FCC. Specifically, the Commission's Order in this proceeding should specify that it will not provide a positive consultative report to the FCC unless and until Verizon provides a commitment to the Commission, in writing, executed by an officer of company qualified to bind the company, that Verizon DC will implement the UNE rates decided by this Commission in Formal Case No. 962 and will not seek to increase them in any petition for reconsideration or appeal.

Exchange Carriers, CC Docket Nos. 01-338, 96-98 and 98-147, letter to FCC Commissioners from AT&T General Counsel James Cicconi, November 13, 2002, at 2.

19 AT&T Exh. 3, Delaration of Robert J. Kirchberger and E. Christopher Nurse, at ¶ 11, citing September 10, 2002, *Communications Daily* at p. 4, "Seidenberg says UNE-P is 'Manageable Issue' for Verizon."

Such a condition is not unreasonable or inappropriate. Rather, it presents Verizon with a clear choice. If it wants to enter the long distance market, then it must first implement the cost-based, competition-enhancing UNE rates this Commission has approved. If, on the other hand, Verizon is unwilling to implement the Commission's UNE rates, then it will have to put its 271 aspirations on hold until its UNE challenge is resolved.

AT&T's concerns are not based on some imagined or hypothetical circumstance. Rather, they are based on Verizon's proven track record of trying to increase UNE rates as soon as a 271 application is approved. In New Jersey, where the Board of Public Utilities ("BPU") endorsed Verizon's 271 application based upon substantial UNE reductions it had ordered just before Verizon filed its 271 application with the FCC, Verizon New Jersey challenged the BPU's UNE rates in federal court shortly after the 271 application was approved.[20] In Pennsylvania, Verizon proposed to double its UNE rates less than three months after the FCC granted its 271 application.[21] To preclude the same problems here in the District, the Commission should require Verizon to waive its rights to challenge UNE rates on appeal as a necessary condition of the Commission's support at the FCC. Otherwise, there is a substantial risk Verizon will "game" the 271 process by obtaining long distance authority based on UNE rates it has every intention of challenging on appeal.

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20 The FCC approved Verizon New Jersey's 271 application on June 24, 2002. Verizon New Jersey filed its federal court appeal of the New Jersey BPU's UNE pricing decision on November 8, 2002.

21 The FCC approved Verizon Pennsylvania's 271 application on September 19, 2001. Less than three months later, on December 7, 2001, Verizon Pennsylvania filed proposals in PUC Docket No. R-00016683 which would more than double its existing UNE-P rates.

Imposing such a condition on Verizon will further, not hinder, the purposes of the Telecommunications Act. One key goal in reducing UNE rates is to bring local exchange competition to District consumers. Competition obviously will put Verizon's local exchange revenues at risk, but that is exactly as it should be. In any fully competitive market, the firm that best meets consumer needs will be the one that wins the business. But at the same time Verizon will be facing additional risks in its local exchange market, it will also be enjoying additional revenue opportunities in the long distance market, assuming it obtains § 271 authority from the FCC. Those additional revenue opportunities are substantial, and Verizon's high-profile presence and outstanding reputation in the District should give Verizon DC the same level of success in long distance that its sister companies already enjoy.[22] This balance of interests is exactly what Congress intended – that Verizon and the other Bell Operating Companies can begin providing long distance service once they take adequate steps to open their local markets to competition.

Finally, imposing this condition on Verizon does not mean that UNE rates can never be changed. The UNE rates being established in Formal Case No. 962 are no more permanent than any other rates set by the Commission. If Verizon believes in the future that these rates are unjustly and unreasonably low, it may avail itself of the Commission's procedures for seeking to increase them, just as any CLEC believing the rates are too high can seek a reduction. That being said, the Commission should make clear that any Verizon proposal to increase UNE rates should also include, in addition to appropriate

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[22] AT&T Exh. 4 at 9 (showing that Verizon Long Distance experienced a 51% growth in its subscribership in the second quarter of 2002 compared to the second quarter, 2001. At the end of the second quarter, 2002, Verizon Long Distance had 9.0 million customers).

cost support, information showing the number of long distance customers Verizon DC is serving, the revenues it receives from those customers, and the growth in both long distance customers and revenues over time. In addition, the Commission should also require Verizon to identify trends over time in the number of UNE-loops, UNE-Platforms and resale arrangements it has provided to CLECs, together with any other information Verizon deems relevant regarding inroads it believes CLECs have made in the District. The Commission should also require that Verizon include information regarding Verizon's financial performance in the District of Columbia, not only from Verizon DC, but also from all other Verizon affiliates that do business in the District of Columbia, including, but not limited to, Verizon's long distance affiliate, its directory advertising affiliate, and its wireless affiliate. Merely because this Commission does not regulate the prices charged by a Verizon affiliate or otherwise oversee its operations in the District does not mean this Commission cannot review information which might be helpful in assessing Verizon DC's wholesale rates, particularly when Verizon can be expected seek to increase UNE rates purely for the purpose of thwarting the further development of competition.

B. CHECKLIST ITEM 1 (Collocation): Verizon Should be Required to Improve Its Processes for Issuing Credits to CLECs for the Return of Collocation Space and for Offering Reduced Collocation Prices to CLECs Willing to Utilize Returned Space

Checklist Item 1 requires that Verizon offer interconnection - including interconnection through collocation – on rates, terms and conditions that are just, reasonable and non-discriminatory. The evidence in this proceeding demonstrates that Verizon's processes for crediting CLECs for returning collocation space is wholly inadequate. Moreover, is shows that Verizon does not take reasonable steps to promote the use of the returned space (which is available at a discounted rate) to collocators seeking new space. In the discussion below, AT&T proposes a few simple conditions that Verizon must satisfy before the Commission endorses Verizon's compliance on Checklist Item 1. Specifically, Verizon should be required to (1) place a notation on its website indicating that returned discounted space was available at a specific central office; (2) develop methods and procedures to prioritize the re-assignment of space; and (3) use a 30 year, instead of 12 year, amortization period to calculate credits to a vacating CLEC. Until Verizon complies with these conditions (as well as those associated with the GRIP issue, discussed below), the Commission should not find that Verizon has satisfied Checklist Item 1.

CLECs have collocated with Verizon since before the passage of the Telecommunications Act in 1996. Over the course of the last two years, however, the number of collocation arrangements provisioned by Verizon decreased and for various reasons CLECs have been forced to return numerous collocation arrangements. In fact, of the 264 collocation arrangements provisioned by Verizon, according to Verizon's own records CLECs have returned **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]** separate arrangements. AT&T Exh. A (Nurse/Kirchberger) at 21. These returned arrangements represent a substantial number of square feet of collocation space not including the hundreds of collocation bays returned.

Under both the federal[23] and intrastate[24] collocation tariffs, the vacating CLEC is entitled to a credit for the unamortized portion of the non-recurring space and facilities conditioning charge when the collocation space is reused either by another CLEC or Verizon itself. AT&T Exh. A (Kirchberger & Nurse) at 20. Given that CLECs pay a non-recurring Space and Facilities Charge of approximately $47,000 under the FCC tariff and approximately $32,000 under the state tariff for 100 square feet of collocation space, the potential refund for returned collocation space is substantial.

Despite the large number of arrangements returned to Verizon by CLECs – and the associated large potential refunds for the returned space – and despite the obvious efficiencies that could be gained from encouraging CLECs to re-use existing collocation space rather than build new, the evidence suggests that Verizon has disregarded its responsibilities to its wholesale customers. Of the **[BEGIN VERIZON PROPRIETARY]**

[END VERIZON PROPRIETARY] occasions, a woefully low number. AT&T Exh. A (Nurse/Kirchberger) at 21. Most troubling is that Verizon's attitude is that the burden is on the CLEC to find new collocators to take the old collocator's space. Verizon asserts that it is not under any statutory requirement to actively advertise the availability of returned space, going so far as to suggest that the vacating collocator itself should take various steps to make other potential collocators aware of the vacated space. AT&T Exh. A (Nurse/Kirchberger) at 22. That proposal, of course, is simply not feasible. Verizon, as the commercial "landlord" of the central

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23 Verizon FCC No. 1

24 Verizon DC, Inc. Tariff P.S.C.-DC.-No. 218, § 2.B.4.d.

office, is the entity with the direct interaction with CLECs interested in collocation and, thus, should be responsible for managing its space – including the reuse of the space.

Not only do vacating CLECs benefit from the streamlined process for the return of collocation space, in-coming CLECs benefit from the discounts available on the returned space. For example, if a collocator paid $47,000 and returned the space after 50% amortization, a new collocator seeking the same space would be able to purchase it for a $23,000 non-recurring charge. This substantial discount can only serve to encourage the entry of competitors through collocation.

Verizon, however, has no incentive to expedite the refund process for vacating collocators or more aggressively pursue new potential collocators. By taking its time in reusing returned space, Verizon can burden both the "old" CLEC that vacated the space and the "new" one that wants to re-use it. The old collocator has to wait on the return of its non-recurring charge; the new collocator may not even know that discounted space is available. In both instances, the development of competition is delayed or denied altogether.

It does not have to be that way. The Commission should require Verizon to take a few simple steps to ameliorate the problems associated with the return of collocation space:

- Verizon should note on its website whether there is "discounted" collocation space available at each applicable central office.
- Verizon should provide quarterly status reports to CLECs who have returned space.
- Verizon should develop a Method and Procedure that would prioritize the re-assignment of CLEC returned space and otherwise streamline the return and crediting process.

- Verizon should use a 30 year amortization period, to calculate the credits due to a vacating CLEC as well as the "discounted" price to a subsequent CLEC.

These reasonable requirements (plus Verizon's commitment for forego its GRIP demand, discussed below), will enable the Commission to find that Verizon is in compliance with Checklist Item 1.

C. CHECKLIST ITEM 1 (Interconnection): Verizon Should Be Required to Offer All CLECs in the District of Columbia the Point Of Interconnection ("POI") Provisions and Language that the FCC Required Verizon to Implement in the AT&T/Verizon Virginia Interconnection Agreement Arbitration.

Despite the FCC's rejection of its "geographically relevant interconnection point" ("GRIP") position in the Virginia arbitration between AT&T and Verizon VA, Verizon continues to make unlawful interconnection demands on CLECs, demands that increase CLEC costs and thereby reduce the ability of CLECs to offer competitively priced local exchange services, or worse yet, discourage CLEC entry in the local exchange market in the District of Columbia.

Verizon's continued insistence on GRIP is evidenced by the language in its Model Interconnection Agreement, which retains the essence of the GRIP position albeit without the GRIP nomenclature.[25] Under Verizon's GRIP policy, as reflected in its recently amended Model Interconnection Agreement, Verizon is requiring CLECs to interconnect at either a Verizon tandem or end office switch serving the Verizon called party, as was the case under its discredited GRIP position. Under its policy, Verizon seeks to determine the POI, contrary to the provisions of the Act and the FCC Rules that place

25 Verizon Checklist Declaration, Attachment 214, Revised Verizon Model Interconnection

that decision in the hands of CLECs, and in effect shift some of the costs of terminating Verizon's traffic to the CLECs. Granting Verizon the ability to impose POIs on CLECs would give it the power to directly –and anti-competitively – affect the CLECs' costs.

Rather than adhering to the law as the FCC mandated in the *Virginia Arbitration Order*, [26] Verizon forces CLECs to expend bargaining chips solely to gain Verizon's adherence to the law, or forces the interconnection agreement into arbitration, which has adverse implications for the few remaining CLECs, many of whom lack the resources to go through a resource-intensive, drawn-out arbitration process. The Commission should not allow this. It should require Verizon to offer all CLECs in the District of Columbia the Point Of Interconnection ("POI") provisions and language that the FCC required Verizon to implement in the AT&T/Verizon Virginia interconnection agreement arbitration.

The selection of a POI affects the CLECs' costs. For example, a CLEC that is required to deliver its traffic to a POI at Verizon's tandem will pay both transport and termination costs to Verizon to compensate Verizon for taking the traffic from the tandem to the end office and ultimately to the called party. The CLEC's origination costs in that circumstance are the costs associated with getting traffic to the Verizon tandem, plus its reciprocal compensation costs for transport and termination. If, on the other hand, the CLEC terminates its traffic at Verizon's end office, its origination costs will be the costs to get its traffic to the end office, while its reciprocal compensation costs will be the termination portion of reciprocal compensation (the cost from the end office to the

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Agreement.

26 *Memorandum Opinion and Order*, CC Dockets Nos. 00-218, 00-249 and 00-251 (released July 17, 2002) (*"Virginia Arbitration Order"*).

called party). Thus, selection of the POI has a marked impact on a CLEC's costs of transport and termination.[27]

The essence of Verizon's GRIP scheme is a fiction that has no basis in the Telecommunications Act or FCC rules. Before the *Virginia Arbitration Order* Verizon fabricated a distinction between a POI and what it has termed an "interconnection point" ("IP"). Verizon then treated the POI as the location where the parties' facilities *physically* interconnect, but used its own creation -- the "IP"-- as the location where the carriers' *financial* responsibilities begin and end, *i.e.*, where reciprocal compensation begins, or where the originating carrier delivers its traffic for termination. This false distinction between physical and financial points of interconnection is carried forward in Verizon's recently revised Model Interconnection Agreement, albeit the "POI/IP" language no longer appears. Indeed, Verizon testified that it continues to draw a sharp distinction between the physical and the financial points of interconnection.[28]

Verizon claims that it is in compliance with the law and the FCC's *Virginia Arbitration Order*, citing to its newly-revised October 25, 2002, Model Interconnection

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27 The difference in costs to the CLEC can be quite considerable. For example, in Delaware, Cavalier raised a claim for over $9 million growing at the rate of over $360 thousand per month. Similarly, in the Virginia arbitration, AT&T estimated that Verizon's similar GRIP proposals would increase AT&T's local interconnection costs by between $1,800,000 and $3,079,000 annually.

28 Tr. 123-129 (Albert). In this colloquy Verizon's Mr. Albert repeatedly stated that the sharing of the costs of interconnection between Verizon and a CLEC is not dependent upon the physical points of interconnection, *i.e.*, the points at which trunks are terminated. The determination of interconnection costs are, according to Mr. Albert, determined by a different section of the Model Interconnection Agreement than the sections that govern the physical termination of trunks. However, he was unable to point to any such other section, and in fact there is no such other section. The CLEC that orders trunks from Verizon for termination of its local traffic bound to a Verizon customer pays for those trunks (including trunks between tandem switches, see Tr. 121-122 and 124).

Agreement that purportedly reflects the rulings in the *Virginia Arbitration Order*.[29] However, the interconnection language in the Model Interconnection Agreement is essentially indistinguishable from the provisions that the FCC found to be unacceptable in the *Virginia Arbitration Order*. Indeed, it is essentially GRIP without the GRIP moniker, as is made plain by its provisions.

Section 66.2.4 of the Model Interconnection Agreement requires a CLEC to interconnect at "each Verizon tandem in a LATA" that subtends Verizon end offices to which a CLEC sends calls for Verizon to terminate. Tr. 120-126 (Albert).[30] In contrast, the FCC rules provide that interconnection can be at a single point in a LATA. There are (or soon will be) three interconnection tandems in the LATA that includes the District of Columbia, one in the District, one in Arlington and one in Bethesda.[31] Therefore, this is not simply an academic issue to a CLEC operating in this LATA.

Section 66.2.5 of the Model Interconnection Agreement requires interconnection at each Verizon end office at which the volume of traffic exceeds the equivalent of one DS1 and/or 200,000 minutes of use in a single month. Tr. 127-128 (Albert). In contrast, the Virginia Arbitration provisions mandated by the FCC have no such mandatory end office interconnection requirement. *Virginia Arbitration Order* at ¶ 53.

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29 Tr. 133-134.

30 Mr. Albert explained that while a CLEC could *physically* interconnect at one tandem in the LATA, it would be required to obtain trunks from that tandem to the other tandems in the LATA. Tr. 121-122.

31 Tr. 117-118.

Section 66.2.6 of the Model Interconnection Agreement limits the number of trunks between a CLEC POI and a Verizon tandem switch to 240 at any time, forcing establishment of trunks to Verizon end offices whenever that magic number is exceeded. Tr. 128-129 (Albert). Again, the Virginia Arbitration provisions mandated by the FCC have no such mandatory end office interconnection requirement. *Virginia Arbitration Order* at ¶ 53.

Section 65 of the Model Interconnection Agreement makes it clear that a technically feasible POI must be "on Verizon's network," and can never be a CLEC wire center, switch or transport facility. Tr. 129-130 (Albert). In contrast, the Virginia Arbitration provisions mandated by the FCC call for interconnection at the AT&T (i.e., CLEC) switch, in the absence of agreement to the contrary. *Virginia Arbitration Order* at ¶ 53.

Verizon has asserted that its Model Interconnection Agreement provisions on POI is simply an entering position for negotiating interconnection agreements, and that CLECs may agree or not agree to those provisions in their interconnection agreements. Tr. 131-132 (Albert). This is no excuse for not adhering to the FCC's mandated interconnection agreement language, for two reasons.

First, the Verizon negotiating position forces CLECs to bargain away a provision that is unlawful, thus giving up something else in return for obtaining a POI provision consistent with the law about which there should have been no dispute to begin with.[32] Second, it ignores extreme differences in bargaining power, in that few, if any, of the

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32 See, Tr. 132 (Albert): Mr. Mellups: "So I think what you're saying is that a CLEC could negotiate these provisions away or change them in some ways, possibly having to bargain away some other bargaining chip that they might have. Would that be fair?" Mr. Albert: "Yes. We're willing to negotiate terms and conditions."

remaining CLECs have the resources to stand toe-to-toe with Verizon in endless rounds of negotiations and arbitrations. Verizon has every incentive to force CLECs to take the interconnection agreement to arbitration under the Act. Most CLECs lack the resources to arbitrate and therefore would be forced to accept the otherwise unlawful POI provision, or bargain it away. As to arbitrated agreements, even though Verizon knows that it will lose the GRIP issue in arbitration, as it did in the *Virginia Arbitration Order*, it gains by delaying the interconnection agreement, thereby frustrating and delaying competitive entry.

The issues surrounding GRIP-type provisions cannot simply be passed off as a bilateral dispute over obscure interconnection agreement language, as Verizon seeks to position it. Rather, they go to the heart of Verizon's compliance with the explicit requirements of the Act and the FCC's regulations implementing those statutory directives. The Commission cannot find that Verizon is in compliance with its obligations under Item 1 of the Competitive Checklist so long as Verizon continues to adhere to its current policies with respect to GRIP.

Section 251 of the Act, and the FCC directives implementing it, most recently in the *Virginia Arbitration Order*, clearly establish (1) that a CLEC has the right to designate the location(s) where its local traffic and Verizon's local traffic will be exchanged (the POI), and (2) that each carrier bears the costs of terminating its traffic on the other carrier's network, that is, Verizon bears the financial responsibility for the costs incurred by the CLECs in terminating Verizon's traffic, and the CLEC bears the financial burden for the costs incurred by Verizon in terminating the CLEC's traffic.

Nothing in the statute or regulations supports the artificial and uneven division of costs that Verizon is attempting to impose on CLECs through its GRIP scheme – or the Son of GRIP in the Model Interconnection Agreement. The FCC ruled in the *Virginia Arbitration Order* that Verizon's GRIP and VGRIP proposals are inconsistent with existing law and must be rejected:[33]

> Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.

Neither the Act nor the FCC's rules or decisions sustain the artificial and inequitable distinction between the point of physical and financial interconnection. In fact, the Act and the FCC's decisions use the terms "interconnection point" and "point of interconnection" interchangeably.[34] And while the POI/IP language no longer appears in

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33 *Virginia Arbitration Order* at ¶ 53 (footnotes omitted).

34 *See* ¶¶ 172 and 209 of the *Local Competition Order* citing §251(c)(2) in explaining how the POI selection affects a carrier's costs of origination and termination. ¶ 172 explains that the interconnection obligation of 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers costs of, among other things, transport and termination." ¶ 209 explains that "Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LECs network at any technically feasible point, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points." And 47 CFR 51.701(c) states as follows: "(c) For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carriers end office switch that

Verizon's Model Interconnection Agreement with the recent October 25, 2002 version, presumably because of the *Virginia Arbitration Order*, its essence – the mandating of POIs by Verizon rather than the CLECs, and the shifting of significant portions of Verizon's originating traffic costs onto the CLECs -- is still very much a factor today, despite the *Virginia Arbitration Order*.

The FCC's definitive statement in the Virginia arbitration proceeding on the clear meaning and effect of the law and the FCC rules should put to rest any argument that Verizon DC might propound in favor of its GRIP-type schemes. The GRIP issue was squarely presented and squarely decided by the FCC in the *Virginia Arbitration Order*, unlike in the case of the Pennsylvania § 271 proceeding. Verizon cannot hide behind the FCC's Pennsylvania § 271 Order to support its position. The FCC itself distinguished its discussion of the GRIP issue in the Pennsylvania 271 case as "not determinative of the question."[35]

Moreover, the FCC's decision follows a long line of FCC, state commission and federal court decisions. The FCC has consistently applied the Act and the Local Competition Order to prevent ILECs from increasing CLEC's costs by requiring multiple points of interconnection. The FCC's June 2000 *Texas 271 Order* re-emphasized the point:[36]

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directly serves the called party, or equivalent facility provided by the carrier other than an incumbent LEC."

35 *Virginia Arbitration Order* at footnote 123.

36 Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC No. 00-65, ¶ 78 (rel. June 30, 2000) (hereinafter "Texas 271 Order").

> Section 251, and our implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA. (citing, Local Competition Order ¶¶ 172, 209).[37]

The Courts and state regulators have affirmed this view. Federal courts have rejected as inconsistent with § 251(c)(2) incumbents' efforts to require competing carriers to establish points of interconnection in each local calling area.[38] The vast majority of state commissions, as well, support the principle that it is the CLEC and not the ILEC that has the right to choose the POI locations.[39]

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[37] The FCC made a similar pronouncement in a January 2001 Order granting in region interLATA authority to SWBT for Kansas and Oklahoma. Memorandum and Order, FCC 01-29, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-region, interLATA service in Kansas and Oklahoma,* CC Docket No. 00-217 (January 22, 2001)("Kansas and Oklahoma Order"). Moreover, the FCC has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes. For example, in an interconnection dispute in Oregon, the FCC intervened as *amicus curiae* and urged the court to reject US West's argument that the Act requires a competing carrier to "interconnect in the same local exchange in which it intends to provide local service." The FCC stated: "Nothing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition." *Id.* at 20.

[38] *See e.g., US West Communications, Inc. v. Minnesota Public Utilities Commission, et al.*, No. 97-913 ADMAJB, slip op. at 33-34 (D. Minn. 1999) (rejecting US West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West); *U.S. West Communications, Inc. v. Hix, et al.*, No. C97-D-152, (D. Colo., June 23, 2000). (A district court in Colorado reversed a state commission's order that a CLEC must establish an interconnection point in every local calling area. The Colorado court held that under the Act and the FCC regulations, "it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points."); *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al.* No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at 26 (W.D. Wa. July 21, 1998) (A district court in Washington affirmed the state commission's determination that AT&T may establish a single interconnection point within each LATA and rejected the ILEC's contention that a CLEC must have an interconnection point in every local calling area in which it offers service).

[39] See, Opinion, *Application of AT&T Communications of California (U5002C), et al., for Arbitration of an Interconnection agreement with Pacific Bell Telephone Company Pursuant to*

The Commission should not issue any favorable report to the FCC on Verizon DC's § 271 application unless Verizon DC agrees to affirmatively offer to CLECs the same interconnection agreement provisions and language on points of interconnection ("POI") that the FCC mandated in the AT&T/Verizon Virginia arbitration, for both existing and future interconnection agreements.

D. CHECKLIST ITEM 2 (UNEs) and CHECKLIST ITEM 4 (Local Loops): The Commission Should Review Verizon's "No Facilities" Policy for High Capacity Loops Because it Delays CLEC Entry and Thereby Restrict Competition in the District of Columbia.

Verizon adheres to an internal policy in which it will refuse to provision high capacity UNE loop orders if "construction" is required, but will provide the very same high capacity facility to its retail customers. Verizon Exh. 9 (Reply Checklist) at 30-31. Verizon's internal "no build" policy for provisioning high capacity loops[40] to CLECs constitutes unlawful discrimination. As a result, Verizon cannot meet Checklist Item 2 (UNEs) and Checklist Item 4 (local loops). Because Verizon is deficient with respect to these checklist items, the Commission, at a minimum should require Verizon to take certain corrective measures to ameliorate the problem.

Section 252(b) of the Telecommunications Act of 1996, No. 00-01-022, p. 13 (CA PUC Aug. 3, 2000). (In California, the state commission similarly considered both statutory and policy grounds when it decided to adopt AT&T's proposal. The commission found that "AT&T is in the best position to analyze its traffic volumes and decide, in specific circumstances, whether it is more economical to interconnect at the tandem or end office."); Order Addressing and Affirming Arbitrator's Decision No. 5, *In the Matter of the Petition of TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company Pursuant to Section 252 of the Telecommunications Act of 1996*, p.3,4, 9 (Aug. 7, 2000) (The Kansas Commission rejected SWBT's interconnection point arguments); Decision of Arbitration Panel, *AT&T Communication of Michigan Inc. and TCG Detroit's Petition for Arbitration*, Case No. U-12465 (Oct. 18, 2000) at 4, 19 (The Michigan PUC affirmed the arbitrator decision that AT&T had offered a better resolution to the interconnection issue).

40 High capacity loops can be provided, for example, over DS1 or DS3 facilities.

Because of the complexities of the issues, AT&T can agree that the Commission can resolve the "no build" issues in a separate proceeding. Besides rejecting Verizon's "no build" policy, the Commission should take steps to ensure that intrastate special access is priced at TELRIC and that special access metrics and penalties are developed and implemented.

The evidence is clear that Verizon enforces a discriminatory and anticompetitive "no facilities" policy, whereby Verizon refuses to provide unbundled access to such loops when it would require "additional construction." The "additional construction" that triggers Verizon's "no facilities" policy includes such routine or minor tasks as installing a repeater shelf in the central office, customer location, or remote terminal; providing an apparatus/doubler case; placing fiber or a multiplexer; adjusting the multiplexer to increase its capacity; placing riser cable or a buried drop wire; or placing fiber or copper cable to replace defective copper cable or provide spare capacity. Verizon Exh. 2B (Rebuttal Checklist Decl.) at 14-15; Allegiance Exh. 1 (Best) at 2. Verizon readily acknowledges that this "no facilities" policy is *not* a based on technical impediments; indeed the basis is solely policy.

Verizon invokes its "no facilities" policy to reject a significant proportion of the CLEC orders for high capacity loops in District. Allegiance's witness testified that in the District, Verizon generally rejects between 10 and 30% of its UNE DS1 orders on the basis of "no facilities". Allegiance Exh. 1 (Best) at 3.

When Verizon rejects a CLEC order on the basis of "no facilities," a CLEC will often have no choice but to place an order for special access facilities if the CLEC intends to maintain the customer. Allegiance Exh. 1 at 4. AT&T's witnesses describe this process as a "three step minuet." AT&T Exh. A (Kirchberger/Nurse) at 12-14.

- ***Step 1:*** The CLEC orders the high capacity UNE DS1 loop but Verizon indicates that there are "no facilities" available.

- ***Step 2:*** The CLEC must either wait an indeterminate period of time until the facility is available – at the risk of losing its customer – or reorders the facility as more expensive "special access."

- ***Step 3:*** The CLEC attempts to convert the special access facility to a UNE facility.[41]

Id. This is a time-consuming, cumbersome and unnecessary process.

Although the special access facility is technically identical to the UNE facility, a number to reasons – the foremost being pricing – makes special access a much less desirable alternative for CLECs.[42] A DS1 special access facility can be priced many times the rate for the same facility ordered as a UNE. AT&T Exh. A (Kirchberger/Nurse) at 14; Allegiance Exh. 1 at 6. Moreover, Allegiance testified that Verizon's requirement that a CLEC cancel a UNE order and then resubmit it as a special access order increases the installation time. Allegiance Exh. 1 at 4. According to Ms. Best, "Verizon's no facilities policy often causes Allegiance to lose the customer." *Id.* But there is no evidence that Verizon's retail sales organization and its customers

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41 Presumably, Verizon cannot at this point claim the "no facility" reason for not honoring that order. But the CLEC must keep track of each separate order and when the conversion of each facility can take place, because Verizon's special access hi-cap facilities have minimum service periods -- 2 months for DS1 and one year for DS3. During these minimum service periods, of course, Verizon gets to collect the higher special access rates for the hi-cap facility for the minimum service period, or the CLEC must pay early termination penalties.

42 The difference between access pricing and UNE pricing is that the former are not determined consistent with the TELRIC methodology, but under rates that include robust contribution to joint and common costs and they contain implicit subsidies that were designed a long time ago to support universal service and the TELRIC rates are designed as forward looking costs.

suffer such delays, and plenty of reason to believe that they do not. The important point here is that the delay cannot be any greater for the CLEC and its customer than for Verizon and its customer. The Act requires no less.

Verizon defends its provisioning policy on the grounds that it only has an obligation to provision DS1 facilities are UNEs "only where such facilities currently exist. Verizon MD does not have an obligation to build new facilities or add electronics to existing facilities for the purpose of providing those facilities as an unbundled element." Verizon Exh. 2B (Rebuttal Checklist) at 21. Verizon further suggests that its provisioning policies are not discriminatory because Verizon offers all comers — including CLECs—the opportunity to obtain access to such capacity at Verizon's retail rates for its special access services. These arguments are both untrue and legally irrelevant.

Verizon's conduct is clearly constitutes unlawful discrimination under 47 U.S.C. §§ 251(c)(2)(D), (3) and §§ 271(c)(2)(B)(ii), (iv). While refusing to provide loop capacity to CLECs in the form of UNEs, Verizon aggressively solicits and fills orders received from its retail end users under the same circumstances. Verizon has acknowledged that it "will build for the retail side," but not for CLECs. This discrimination constitutes a major barrier to competition in the District.[43] Moreover,

43 It is textbook law that refusal by a vertically integrated firm with monopoly power over an input (here, Verizon) to sell essential intermediate inputs (i.e., unbundled loops) to non-integrated wholesale customers (i.e., CLECs) at prices and other terms comparable to the implicit terms by which the integrated firm supplies the same inputs to its own retail operations constitutes unlawful discrimination. *See Otter Tail Power Co. v. United States*, 410 U.S. 366, 373-74 (1973); *Conway Corp. v. FPC*, 510 F.2d 1264, 1270-74 (D.C. Cir. 1975); *City of Groton v. Connecticut Light & Power Co.*, 662 F.2d 921, 928-31 (2d Cir. 1981).

Verizon's policy raises a legitimate question of whether its engineering assumptions for determining UNE cost implications are overstated.[44]

Of course, the underlying basis for Verizon's policy is not complicated or mysterious. Given that Verizon is provisioning the very same facility as a UNE or as special access, Verizon would prefer to charge the much greater rate special access rate. Moreover, the more difficult Verizon makes it for a CLEC to serve a customer, the easier the time Verizon will have to win-back that same customer.

Further, there are no carrier-to-carrier metrics for special access that would feed into a self-executing performance assurance plan. As a result, Verizon could provision a special access high capacity loop as slowly as it desired without having to be concerned with any financial penalties for poor performance. In contrast, UNE provisioning is captured in the carrier-to-carrier metrics and this data funnels into the Performance Assurance Plan. The important point here is that the delay cannot be any greater for the CLEC and its customer than for Verizon and its customer. The Act requires no less.

Fortunately, the Commission can direct certain reasonable solutions consistent with the actions taken in other Verizon states. For example, in Virginia, the Hearing Examiner after hearing evidence regarding the Verizon "no build" policy, stated:

> However, I find that to fulfill our consulting role the commission should advise the FCC that Verizon Virginia's policy has a significant and adverse effect on competition in Virginia, is inconsistently applied across UNEs, is at odds with industry

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44 Verizon's engineering assumptions concerning spare capacity affect UNE rates. The utilization rates built into the UNE rates are the same fill factors for retail. For example, under Verizon's no-build policy, there would be no need to provide for spare capacity in the network to provision for future anticipated growth or for customer churn. Thus the fill factor for all loop components would only be required to account for administrative spare requirements and defective pairs. Adjusting Verizon's loop cost study to eliminate those cost components that are in conflict with its no-build policy would produce a considerable reduction in loop costs.

accounting rules, and is inconsistent with TELRIC-pricing principles.

Virginia State Corporation Commission, *In the Matter of Verizon Virginia, Inc., To Verify Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c)*, Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner, (July 12, 2002) at 116. Apparently, as a direct result, the Virginia State Corporation Commission initiated an investigation of Verizon Virginia's "policies and practices in provisioning DS-1 UNE loops . . ."[45] This Commission can, and should, initiate a similar investigation of this problem.

In addition, the Commission should consider the Massachusetts Department of Telecommunications and Energy's recent finding that "special access is a barrier to entry for CLECs that want to compete against Verizon's retail private line services because special access services impose higher costs on CLECs that are imposed on Verizon."[46] To remedy this problem, the Department determined that it would price intrastate special access in the same manner as UNEs. *Id.* at 62. The CLEC concerns with the Verizon "no build" policy could be at least partially allayed if this Commission – like the

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45 *Petition of Cavalier Telephone, LLC, For Injunction Against Verizon Virginia Inc. for Violations of Interconnection Agreement and For Expedited Relief to Order Verizon to Provision Unbundled Network Elements in Accordance with the Telecommunications Act of 1996,* Case No. PUC-2002-00088 (Oct. 28, 2002).

46 Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc., d/b/a/ Verizon Massachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts, D.T.E. 01-31-Phase I (May 8, 2002) at 62. The Department concluded:

> Pricing special access services at UNE levels will best promote competition, protect consumers, and promote innovation in the market by enabling CLECs to better compete, thereby allowing market forces to control retail prices and service offerings.

Id.

Massachusetts Department – required that Verizon price its intrastate special access consistent with the TELRIC standard. Likewise, the Commission should approve metrics that apply to special access intervals to ensure that Verizon does not engage in further discriminatory treatment in provisioning high capacity loops. If the pricing and provisioning of intrastate special access were addressed, Verizon would have less incentive to invoke the "no build" policy. These remedial steps are critical for CLECs and should be addressed prior to the Commission taking any action on Verizon's 271 application.

E. CHECKLIST ITEM 4 (Local Loops) and CHECKLIST ITEM 5 (Local Transport): To Cure the Serious Flaws in Verizon's Dark Fiber Practices, the Commission Should Direct Verizon to Offer CLECs Dark Fiber in the District of Columbia Under the Same Terms and Conditions Approved by the FCC in the Virginia Non-Price Arbitration Order.

Checklist Item 4 (local loops) and Checklist Item 5 (local transport) obligate Verizon to make dark fiber available to CLECs in the same manner as Verizon is able to utilize such fiber itself, *i.e.*, on nondiscriminatory terms and conditions at technically feasible points. Verizon's policies and practices concerning dark fiber, however, do not demonstrate that it complies with these two checklist items. Therefore, the Commission should require Verizon to adopt the specific interconnection terms and conditions approved by the FCC in its *Virginia Non-Price Arbitration Order*.

The issue of dark fiber and its availability to CLECs has been a contentious point between Verizon and the CLECs ever since the FCC made dark fiber a UNE in the 1999 *UNE Remand Order*. In fact, Verizon opposed the designation of dark fiber as an UNE before the FCC. Having lost that battle, Verizon is still working to frustrate the CLECs' use of dark fiber.

In their Checklist Declaration, AT&T's witnesses Mr. Nurse and Mr. Kirchberger described a series of problems regarding Verizon's dark fiber practices and policies. AT&T Exh. A (Nurse/Kirchberger) at 7. For example, Verizon does not make available to CLECs the necessary tools to five a network overview of available fiber. As a result, CLECs often must go through fruitless searches for available fiber armed with inadequate information and terminating in frustration. *Id. at* 8. Verizon requires CLECs to specify with precision the exact fiber end points in order to identify available fiber. *Id.* at 8. Verizon does not suggest that it, too, suffers through this process as it serves its retail customers. This process, of course, is unreasonable and burdensome for CLECs and serves to undermine legitimate CLEC attempts to provision fiber to a customer's building. *Id.*

Even if a CLEC can obtain dark fiber, Verizon's practices can make it nearly impossible to use. As AT&T's witnesses explained:

> [T]he real "Catch 22" starts after available dark fiber is identified, because Verizon does not permit a CLEC to order it until it has a collocation arrangement with a fiber termination panel (at each end). In other words, once the dark fiber is identified, the CLEC must first order the collocation arrangement – with a standard interval of 76 business days; the CLEC may not concurrently order from Verizon both the collocation arrangement and the dark fiber. However, by the time Verizon completes the collocation interval and the *second* order for fiber is submitted, the fiber may then be "not available." Verizon had not permitted a CLEC to reserve dark fiber (although Verizon effectively does so for its own purposes).
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> AT&T Exh. A (Kirchberger & Nurse) at 9.

The FCC in the *Virginia Arbitration* resolved these dark fiber issues and Verizon asserts in its Rebuttal Checklist Declaration that it has now revised its "Model Interconnection Agreement" to include the Virginia outcome. Verizon Exh. 2B (Rebuttal Checklist Decl.) at 38. According to Verizon, these terms "are available for CLEC interconnection agreement negotiations." *Id.* The problem, however, is that Verizon will only offer those terms to carriers that negotiate or arbitrate new interconnection agreements. Thus, no carrier operating in the District could gain the benefit of the FCC's resolution of the dark fiber issue unless it were in the midst of interconnection agreement negotiations.

Even then, Verizon's Model Interconnection Agreement language is merely its opening offer an opening offer in the course of negotiations. Verizon's model terms and conditions have not been approved by any Commission and are not binding on any party. Any CLEC wanting to modify the language, even slightly, might still be required to engage in a full arbitration.[47]

The simple solution to correct these problems is to require Verizon to tariff the same dark fiber terms and conditions in the District as the FCC adopted in the Virginia arbitration. By using the tariffing process, CLECs could immediately take advantage of the more favorable terms and conditions associated with dark fiber.[48] This simple solution would help fix Verizon's broken dark fiber process, and would permit Verizon to satisfy Checklist Items 4 and 5 with respect to the dark fiber issue.

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47 Verizon has yet to implement methods and procedures to implement all of its obligations under the Virginia Arbitration. Accordingly, this shortcoming puts CLECs at a disadvantage vis-a-vis Verizon's retail operations, and therefore should be corrected before Verizon is granted interLATA authority.

48 CLECs would not have to wait until modifying its interconnection agreement before getting the benefits of the new language. As such, prohibitive litigation costs could be avoided.

F. CHECKLIST ITEM 4 (LOCAL LOOPS) AND CHECKLIST ITEM 5 (LOCAL TRANSPORT): Inasmuch as Verizon's OSS for CLECs to Order New EELs Burdens CLECs with Unreasonable Costs and Delays, the Commission Should Require Verizon to Implement the Same Ordering Processes in the District of Columbia That are Already in Place in Massachusetts and Rhode Island.

The process for ordering an EEL – or an Enhanced Extended Loop – is expensive, slow and inefficient creating delays for the provisioning of new services to customers. This arduous process discriminates against CLECs and further demonstrates that Verizon does not meet Checklist Item 4 (local loops) and Checklist Item 5 (local transport). Verizon can easily improve this ordering process by permitting coordinated rather than sequential ordering and not charging for an EEL until it is fully functional. The Commission should require Verizon to satisfy these punch list items before finding Verizon compliant with Checklist Items 4 and 5.

An EEL is generally the combination of an interoffice facility ("IOF"), a loop or loops and a multiplexer if the IOF and the loops are different speeds. AT&T Exh. C at 44. Often a CLEC will use an EEL when it is uneconomic to collocation at a certain central office perhaps because of the population density of the area intended to be served. Under Verizon's current ordering process, when the IOF and the loops are of different speeds (*e.g.*, a DS1 IOF combined with a DS0 loop) the CLEC must make separate and sequential orders for the loop and the IOF. *Id.* In other words, a CLEC would first order the IOF. Verizon would begin charging for the IOF even though the subtending loops have not been ordered, much less provisioned. As AT&T's witnesses explained in their OSS Declaration, the loop provisioning intervals may be as long as 15 days and could be dependent on whether the loop is even available. *Id.*

This EEL ordering process is substantially improved in Massachusetts and Rhode Island. *Id.* at 45. In Massachusetts a CLEC may place an order for the backbone EEL element (the IOF) as well as the lower speed EEL loop at the very same time.[49] Although the precise ordering process posed an administrative problem for Verizon MA, it was nevertheless able to design a manual work-around solution that allowed Verizon to comply with the Department's order. The result is that in Massachusetts – unlike the District of Columbia– a CLEC would not pay for an EEL until the CLEC had end-to-end connectivity.

The Massachusetts-Rhode Island process for ordering an EEL should be required of Verizon in the District as part of the Commission's requirements related to dark fiber. Only when the Commission determines that Verizon has remedied these CLEC problems, can it reasonably conclude that Verizon complies with Checklist Items 4 and 5.

G. CHECKLIST ITEM 8 (Directory Listings): To Help Ensure That Verizon Provides Reasonable and Nondiscriminatory Access to Directory Listings, the Commission Should (1) Require Verizon to Undertake a Special Study of the VIS Directory Listing Database in the District of Columbia as was Done in Virginia, and (2) Direct That Verizon May Not Charge (or Backbill) for Directory Listings Inquiries.

Verizon fails to provide nondiscriminatory access to directory listings in accordance with Checklist Item 8. The process utilized by Verizon for directly listings for wholesale customers has numerous deficiencies especially when compared with the processes used for Verizon's own retail customers.

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49 These orders must be on separate Access Service Requests ("ASRs") that are related and submitted at the same time.

The accuracy of Verizon's directory listings for CLEC customers has been shown to be problematic. For example, while KPMG gave Verizon a "pass" on directory listings in Virginia, the Virginia, West Virginia, and Maryland case records are heavy with evidence that CLEC directory listings in fact have been bungled by Verizon. In Virginia, for example, the Report of Hearing Examiner Skirpan catalogued numerous white pages directory listings problems actually experienced by Cavalier, Cox and NTELOS.[50] Hearing Examiner Skirpan concluded that "I disagree with any attempts by Verizon Virginia to minimize the level of directory problems that have been experienced in Virginia."[51] In West Virginia, Consumer Advocate Billy Jack Gregg reported in the 271 *Workshop Supplemental Final Report* he assembled at Commission direction that "directory listings problems are a major unresolved issue."[52] Given that Verizon claims identical OSS between Virginia, Maryland, West Virginia and the District, there is no reason to assume that Verizon DC's directory listings are any less prone to error than in the other jurisdictions.

The problem is that Verizon's processes for verifying directory listings accuracy are flawed, and depend in large part on the CLECs themselves to unearth Verizon-caused errors. The process by which a CLEC obtains a white pages listing for its customer contains a number of vulnerable areas where the CLEC listing may become corrupted.[53]

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50 Joint Exhibit 1, Report of Alexander F. Skirpan, Jr., Hearing Examiner, at 135-140.

51 *Id.* at 144.

52 West Virginia Joint Exhibit 1, Workshop Supplemental Final Report at 2. Indeed, Verizon's own investigation confirmed 114 CLEC directory listing errors in just four West Virginia directories out of 11,182 *total* CLEC listings in those directories, for error rates between 0.67% and 1.60%. If these errors had been compared to directory listing changes, rather than total listings, the error rates would be far higher.

53 AT&T Exhibit A (Checklist Declaration) at ¶¶ 35-37.

- First, a CLEC orders the directory listing through a Local Service Request ("LSR").
- Second, Verizon responds to the LSR through an LSR Confirmation ("LSRC").
- Third, the order goes to Verizon's Service Order Processor where a Service Order is created that tasks various Verizon internal departments to complete work consistent with the LSR. The CLEC is sent a provisioning completion notice ("PCN") and a billing completion notice ("BCN") when Verizon completes the provisioning and data base update steps, respectively.
- Fourth, the Service Order proceeds to the Directory Assistance ("DA") database and separately to Verizon's directory listing publishing affiliate, Verizon Information Services ("VIS").

This complex process can generate a significant number of errors that ultimately may result in an inaccurate white pages listing – apparently at a higher error rate for CLECs than for Verizon's own retail customers.[54]

The accuracy of *directory listings* was never tested by KPMG and there is no current metric associated with directory listing accuracy tied to Verizon's self-executing performance plan.[55]

The implications for CLECs for an inaccurate directory listing are severe and cannot be easily remedied. The CLEC customer must bear the implications of the error for a whole year, *i.e.*, until the next directory is published.[56] Such errors are particularly

54 AT&T Exhibit A (Checklist Declaration) at ¶ 37.

55 AT&T Exhibit A (Checklist Declaration) at ¶ 34. Metric OR-6-04 will be implemented by Verizon in the District of Columbia Carrier-to-Carrier Guidelines, but is not part of the incentive payments of the PAP proposed to be adopted by the Commission. Metric OR-6-04 measures a sample of Verizon's manual internal Service Orders against the CLEC's LSRs. It does not compare the LSRs to the VIS database of listings.

56 AT&T Exhibit 1 (Checklist Declaration) at ¶ 33. AT&T's panel notes that the "loose leaf errata directory sheets are no substitute" for a correct listing in the white page directory.

harmful to CLECs attempting to enter the local market, even if Verizon is ultimately to blame. In any case, directory listing errors reflect poorly on the CLEC, because the customer is apt to blame the CLEC regardless of the source of the error.

The process relied upon to verify the accuracy of the directory listings is burdensome and simply not workable. Verizon has stated that when a CLEC submits an LSR, the LSR Conformation ("LSRC") and the billing completion notice ("BCN") should contain all of the information for the CLEC to verify the accuracy of its order for a simple listing. This aspect of the process – verifying the accuracy of the information contained on the LSRC or BCN – seems reasonable.[57]

After the listing is entered in the VIS database, Verizon provides CLECs "opportunities" to confirm that the directory listing is accurate. Verizon provides CLECs with a Listing Verification Report ("LVR") approximately 30 days prior to the closing date for directory publication.[58] Even if a CLEC received and reviewed the LVR 30 days prior to the publication cutoff date, subsequent activity could still incorrectly alter the listing. But, if the CLEC did not review the LVR until closer to the publication deadline, it might not have sufficient time to make a thorough review.

However, errors can be introduced at other points in the directory listings process. For example, even *after* the order goes from the service order processor to the VIS directory listings database, changes can introduce listing errors. For this reason, Verizon now recognizes that other means of checking the directory listing are better. Verizon is

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57 AT&T's witnesses recognized that a CLEC is responsible for any errors that it submits to Verizon. AT&T Exhibit A (Checklist Declaration) at ¶ 36, footnote 19.

58 AT&T Exhibit A (Checklist Declaration) at ¶¶ 36-37.

now urging CLECs to utilize the directory listings inquiry ("DLI").[59] However, the DLI can only be used one order at a time. That is, if a CLEC has 1000 orders, it must dip into the database 1000 times. This could become expensive for the CLEC, and another revenue source for Verizon. Verizon's interconnection agreements contain a per inquiry (or "per dip") charge of $0.24 to $0.27 for "pre order" inquiries such as the DLI. [60]

Verizon's witness Ms. McLean claimed that Verizon has not imposed this charge on CLECs. Tr. 330 (McLean). She explained that because Verizon is trying to encourage CLECs to use the directory listings inquiry process, it does not intend to charge for dips into the "pre order" database. However, Ms. McLean was unable to commit that Verizon would not in the future charge CLECs for a DLI "dip." Tr. 330-331.

There is an obvious inconsistency between Ms. McLean's testimony and the language in Verizon's interconnection agreements. While Verizon claims it does not bill for such dips on a per query basis, such charges do appear in interconnection agreements – including Verizon's Model Interconnection Agreement and the pricing list in Verizon's most recent proposal to AT&T for an interconnection agreement in Virginia. Therefore, Verizon could at any time institute such per query charges, and indeed backbill for charges not previously billed, because interconnection agreement trump any other oral promises or representations.

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59 Tr. 329 (Toothman).

60 Verizon's Model Interconnection Agreement contains a per query charge of 27¢. Tr. 331-332 (McLean). The price list for the interconnection agreement between AT&T and Verizon Virginia, as proposed by Verizon to AT&T on November 4, 2002, contains a per query charge of 24¢.

If the DLI is to become the preferred tool for CLECs to check the accuracy of directory listings, the Commission should not support Verizon DC's application for 271 authority before the FCC unless Verizon commits in writing by an officer empowered to commit the company that it will not charge (or backbill) for directory listings inquiry (DLI) queries. Moreover, the Commission should require that any future flat-rated charge for pre order queries, as may be proposed by Verizon DC, shall be developed without regard to the volume of DLI queries.[61]

In any event, all of these verification processes – the LSRC, the BCN, the LVR and the DLI -- shift to the CLECs the entire burden and costs of confirming the accuracy of the listings. Verizon has never addressed the simple question of why the CLECs should be forced to verify continually information that should have been provided in the LSR Confirmation.[62] Nor has it addressed the fact that the same problems are not faced by Verizon's retail operations, because the Verizon retail reps feed the customer information directly into a system that has real-time edits and interaction with Verizon back-office systems. For example, Verizon's retail operations do not review the LVR, yet Verizon's directory listings appear to be remarkably error-free.[63]

The KPMG test cannot stand for the proposition that KPMG tested directory listings. By design, KPMG did not ever undertake such a test. In the Virginia OSS test, KPMG did not test directory listings to determine whether they actually appeared in the printed directories – either white pages or yellow pages – because all of KPMG's listings

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61 *See*, Tr. 332-333.

62 AT&T Exhibit A (Checklist Declaration) at ¶¶ 38-39.

63 AT&T Exhibit A (Checklist Declaration) at ¶ 37.

were unpublished numbers. Instead, KPMG simply checked the separate directory *assistance* database to see whether its numbers showed up as unpublished.[64] And because KPMG had no relevant test of directory listings, it had no subsequent test of the process to detect and correct errors and omissions. KPMG did not test the Listings Verification Report (LVR) for Directory Listings, although it recognizes that this is the process Verizon establishes for CLECs to use.[65] KPMG's failure to test directory listings in Virginia is a serious omission given the importance of accurate directory listings to CLECs, and the number and nature of the errors that were demonstrated by the CLECs.

As AT&T's witnesses testified, "[t]he fundamental problem is that there is no end-to-end process that verifies that the final result – the printed directory – will be comparably free of Verizon errors. Verizon's responsibility does not end at the point that it hands the directory listings data off to VIS."[66]

To help overcome the problems inherent in its standard directory listings processes, Verizon conducted a Special Study in Virginia. The Virginia Special Study of directory listings explored the accuracy of the process from the Service Order written by Verizon to the update of the VIS database. Tr. 326-327 (McLean). This is the link in the directory listings process that was never tested by KPMG in Virginia.

An examination of this integral link in the process – from the Service Order to the VIS database -- would help to confirm whether directly listings reflect the data contained

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64 AT&T Exhibit C (OSS Declaration) at ¶ 46.

65 *Id.*

66 AT&T Exhibit A (Checklist Declaration) at ¶ 39.

in the Verizon Service Order. While Verizon may not believe that a special study of this kind is needed in the District of Columbia (Tr. 328 (McLean)), this Commission should find that the directory listing errors thus far uncovered in neighboring jurisdictions – all subject to the same Verizon processes as in the District -- warrants a closer look at Verizon's performance over a limited, six-month period. The Commission should require Verizon to engage in a six-month Special Study of District directory listings like the one recently conducted on directory listings in Virginia.

H. CHECKLIST ITEM 13 (Reciprocal Compensation): Verizon Is Not In Compliance with the FCC's Intercarrier Compensation Order.

The record in this proceeding convincingly demonstrates that Verizon has utterly failed to evidence its compliance with its reciprocal compensation obligations under Checklist Item 13. Specifically, despite interconnection agreement language requiring it to pay reciprocal compensation on ISP-bound traffic, Verizon has unilaterally withheld over $12 million (over $15 million factoring in accrued interest) from AT&T alone on compensable ISP-bound traffic through June 2001, the effective date of the FCC's *Intercarrier Compensation Order*. Indeed, over the last 18 months, Verizon has disregarded the *Intercarrier Compensation Order* by refusing to pay intercarrier compensation on traffic in excess of the 3:1 ratio of incoming to outgoing calls.(presumed, by the FCC, to be ISP-bound traffic) since June, 2001. The result, of course, is that CLECs are terminating millions and millions of Verizon's customer's minutes *without any compensation* in the District of Columbia. Until Verizon exhibits its compliance with its reciprocal compensation obligations under Checklist Item 13, the

Commission cannot offer a favorable recommendation on this aspect of Verizon's 271 application.

Reciprocal compensation refers to the payments made by one carrier (whose customer originates a local call to a second carrier who terminates that call to its own end user customer. Carriers incur costs to transport and terminate calls and are entitled to appropriate compensation. Pursuant to checklist item (xiii) of Section 271, Verizon DC must provide "[r]eciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2)." Section 252(d) provides that a state commission may not consider the terms and conditions for reciprocal compensation to be just and reasonable unless the they "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and that the costs are based on "a reasonable approximation of the additional costs of terminating such calls."

Although Verizon asserts that it "offers reciprocal compensation arrangements to CLECs pursuant to interconnection agreement in accordance with applicable law" Verizon Exh. B (Checklist Decl.) at ¶ 333), Verizon's contention is simply false. The substantial weight of the evidence in this proceeding is that Verizon has completely disregarded its reciprocal compensation obligations.

In 1999, Verizon gave notice to AT&T and other CLECs that it would no longer pay reciprocal compensation on traffic it considered to be ISP-bound. Out of thin air, Verizon determined that all traffic in excess of a 2:1 inbound to outbound ratio was ISP-bound and therefore not compensable. Tr. 251-52 (Smith).[67] Verizon then simply stopped paying reciprocal compensation on this traffic that it, completely on its own, found objectionable. As a result of its actions, Verizon reaped a windfall of over $15 million just in the case of its withholding *vis-à-vis* AT&T.[68] Verizon never bothered to obtain this Commission's approval for its anti-competitive action.[69]

To date the Commission has failed to act on AT&T's complaints regarding Verizon's practices. Although AT&T filed its complaint 18 months ago -- in June 2001 – the Commission has not yet even appointed someone to hear the case. AT&T Exh. A (Kirchberger/Nurse) at 30-31.

There is no reason AT&T's complaint should still be languishing on the Commision's docket. Logically, the FCC's *Intercarrier Compensation Order*, issued in April 2001, should have resolved the dispute between AT&T and CLECs on a going-forward basis.[70] In that order, the FCC established a rebuttable presumption that, for the future, all traffic above a 3:1 terminating to originating ratio is presumed to be ISP-bound

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67 Verizon's witness, Mr. Smith, acknowledges on cross examination that the basis for Verizon's withholding was an arbitrary ratio neither contained in the relevant interconnection agreement nor approved by the Commission. Tr. 251-52.

68 Petition of AT&T Communications of Washington, DC, Inc., Case No. TAC 16, (June 12, 2001).

69 The reason why Verizon would hesitate to seek Commission approval is rather obvious: Over 30 state commissions – as well as numerous federal courts – have concluded that reciprocal compensation is indeed payable on ISP-bound traffic. AT&T Exh. A (Nurse/Kirchberger) at 27. Despite the clear weight of regulatory and judicial opinion, Verizon's witness "can't speak to what the industry consensus was at that time." Tr. 246 (Smith).

70 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order (April 27, 2001) ("Intercarrier Compensation Order").

traffic subject to an interim transitional compensation mechanism. Compensation for ISP-bound traffic (*i.e.*, traffic exceeding the 3:1 ratio) is capped at a minute-of-use rate that will gradually decline over a 36-month period.[71] Although Verizon asserts that it has implemented the provisions of the FCC's *Intercarrier Compensation Order*, it qualifies that assertion:

> Accordingly, to the extent that Verizon DC is exchanging Internet-bound traffic and traffic properly subject to reciprocal compensation under the Act, and is required by an interconnection agreement to pay reciprocal compensation on local traffic, Verizon DC will apply the presumption that traffic that exceeds a 3:1 ratio of terminating to originating is Internet-bound traffic.

Verizon Exh. B (Checklist Decl.) at ¶ 334.

This qualifying language strongly suggests that Verizon has no intention of complying with its reciprocal compensation obligations. First, Verizon does not explain what it means by traffic "properly subject to reciprocal compensation under the Act." Second, Verizon does not explain what it means when it states that it will apply the FCC-mandated ratio only if "required by an interconnection agreement to pay reciprocal compensation on local traffic." Verizon never asserted or otherwise demonstrated that it provides any compensation for traffic exceeding the 3:1 inbound to outbound ratio despite the specific rate scheme for such traffic adopted by the FCC in the *Intercarrier Compensation Order*.[72] Although Verizon's sister companies compensate carriers for terminating traffic in excess of the 3:1 ratio, under identical interconnection agreements,

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71 *Intercarrier Compensation Order*, ¶ 77-79.

72 Under the *Intercarrier Compensation Order all* traffic in excess of 3:1 is eligible for the compensation under the declining FCC Intercarrier compensation rate. All traffic up to the 3:1 ratio is considered pure local traffic (not ISP-bound) and is compensable at the Commission's reciprocal compensation rate.

Verizon DC has provided no reliable evidence that similarly situated carriers are being compensated in the District of Columbia.

Until Verizon pays all past due reciprocal compensation to AT&T and other CLECs – amounts due under the terms of the relevant interconnection agreements as well as amounts due under the terms of the FCC's *Intercarrier Compensation Order* – this Commission will not be in a position to conclude that Verizon has demonstrated compliance with the Checklist Item 13 requirements.

I. Verizon Should Be Required to Assist the Commission's Staff to Replicate the Carrier-to-Carrier ("C2C") Metrics in the District of Columbia, Either Directly or With Third Party Assistance, and in Furtherance of that Endeavor – and to Also Allow CLECs to Replicate Metrics Results -- Should Be Required to Publish the Metrics Business Rules for the District of Columbia.

The Commission has already recognized that the replication of the District of Columbia C2C metrics are important, by including a replication requirement directly in the District of Columbia PAP: "For at least the first six months after the District of Columbia PAP becomes effective, the Commission Staff will replicate Verizon DC's performance reports to assure that the data in the reports accurately reflects the service quality being provided to the CLECs. The Commission may elect to continue the replication for as long as it deems necessary."[73] The Commission should assist that replication effort by requiring Verizon DC to assist the Staff, and to publish the metrics business rules in sufficient detail to allow successful replication without recourse to nonpublic or proprietary data.

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73 District of Columbia PAP at § II.K.4.

The accurate reporting of the C2C metrics is one significant way to help ensure that the Operations Support Systems ("OSS") that Verizon uses to provide wholesale services to CLECs do and will continue to provide nondiscriminatory access. Nondiscriminatory access is critical so that CLECs may enter and provide competitive local exchange services to both residential and business customers in the District of Columbia. OSS form a critical link in the ability of CLECs to irreversibly enter the local market. The FCC "consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition."[74] If OSS is prone to error or is unstable, CLECs cannot successfully enter or remain in the local market on a meaningful scale.

The Commission should be concerned not only that the OSS supports irreversible entry for large business, but also that the OSS supports irreversible entry for the District of Columbia's residential users, which has not happened yet. The Commission's continued oversight in this regard is vitally important, because Verizon has no particular incentive to provide CLECs -- its competitors -- with good OSS performance. The better the OSS works, the easier it is for CLECs to compete and for customers to move their services from Verizon to a CLEC.[75]

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74 Memorandum Opinion and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Communications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (released June 30, 2000) ¶ 92; First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (released August 8, 1996) ("Local Competition Order"), ¶ 518. *See also id.*, ¶ 522 ("We find that such operations support systems functions are essential to the ability of competitors to provide services in a fully competitive local services market").

75 AT&T Exhibit C (Kirchberger/Nurse OSS) at ¶¶ 16-18.

Certainly, the Commission cannot simply rely on the KPMG test in Virginia because it was limited in scope in crucial respects. The important functions that were not tested by KPMG include the following: (a) electronic billing and the billing of reciprocal compensation; (b) accuracy and reliability of the metrics, specifically compliance with OSS business rules, verification of metrics change control, and validation of the correctness (and stability) of the retail analogs for the parity metrics; (c) actual provisioning of orders in a high volume environment; (d) billing claims, escalations, and the posting of billing credits; (e) actual directory listings publications in the telephone book, or at least the VIS data base used to generate the directory listings publication; (f) actual collocation; and (g) high capacity loop and interoffice circuit order processes and end-to-end trouble report processing for special circuits, including EELs.[76]

In addition, the KPMG test has inherent limitations that preclude total reliance on it to prove in Verizon's OSS. The test is a snapshot in time and does not prove that Verizon *actually* provides adequate OSS, but at best, only that the OSS is capable of providing adequate OSS.[77] The KPMG test was designed to test many aspects of the OSS piecemeal rather than end-to-end, leading to relaxed actual standards for the total end-to-end process (*Id.* at ¶ 52-53).[78] The KPMG test also applied a "p-value" to benchmark metrics that lowered the benchmark standards in some instances even more, translating a "fail" into a "pass (*Id.* at ¶ 54). The volume testing part of the KPMG test

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76 AT&T Exhibit C (Kirchberger/Nurse OSS) at ¶¶ 24-49. *See also* Joint Exhibit 1, MD Tr. 1308-1315; 1327-1333 (Cross-examination of KPMG).

77 AT&T Exhibit C (Kirchberger/Nurse OSS) at ¶ 50. *See also* Joint Exhibit 1, MD Tr. 1285 (Cross-examination of KPMG).

78 *See also* Joint Exhibit 1, MD Tr. 1337 (Cross-examination of KPMG).

also did not test through to completion of volume test orders, as the KPMG witness in Maryland acknowledged.[79] Rather the volume test ended with the sending of confirmations that a transaction was received by Verizon, and did not test provisioning and billing completion notifiers (PCNs and BCNs), maintenance and repair, and billing (*Id.*).

It also failed to reflect real world experience of the CLECs, which experience far more errors that the KPMG test uncovered. For example, while KPMG gave Verizon a "pass" on directory listings in Virginia, the Virginia, West Virginia, and Maryland case records are heavy with evidence that CLEC directory listings in fact have been bungled by Verizon. In Virginia, for example, the Report of Hearing Examiner Skirpan catalogued numerous white pages directory listings problems actually experienced by Cavalier, Cox and NTELOS.[80] Hearing Examiner Skirpan concluded that "I disagree with any attempts by Verizon Virginia to minimize the level of directory problems that have been experienced in Virginia."[81] In West Virginia, Consumer Advocate Billy Jack Gregg reported in the Workshop Supplemental Final Report that "directory listings problems are a major unresolved issue."[82] Given that Verizon claims identical OSS between Virginia, Maryland, West Virginia and the District, there is no reason to assume

79 Joint Exhibit 1, MD Tr. 1287-1288 (Cross-examination of KPMG).

80 Joint Exhibit 1, Report of Alexander F. Skirpan, Jr., Hearing Examiner, at 135-140.

81 *Id.* at 144.

82 West Virginia Joint Exhibit 1, Workshop Supplemental Final Report at 2. Indeed, Verizon's own investigation confirmed 114 CLEC directory listing errors in just four West Virginia directories out of 11,182 *total* CLEC listings in those directories, for error rates between 0.67% and 1.60%. If these errors had been compared to directory listing changes, rather than total listings, the error rates would be far higher.

that Verizon DC's directory listings are any less prone to error than in the other jurisdictions.

In addition, Verizon itself acknowledged a long-standing systemic usage billing problem in which minutes of use were improperly inflated for UNE-P accounts that were converted from CRIS to expressTRAK, leading to double billing of those minutes of use.[83] This billing problem affected five DC CLECs and their customers. *Id.* at 262. The double billing was caused by minutes of use being accrued in both CRIS and expressTRAK for accounts that had been transitioned from SOACS to expressTRAK. The problem was caused by a software modification implemented in March, 2001 and was not corrected until May 19, 2002, a 14-month period that spanned the KPMG test period. Yet, KPMG did not discover this error because it only tested expressTRAK bills and not the CRIS system.[84] And in September 2002 Verizon managed to erroneously send 5628 pages of AT&T's Customer Service Records ("CSRs") to Cavalier, which obviously raises a potentially serious issue of Verizon's billing systems for safeguarding CLECs' Customer Proprietary Network Information ("CPNI"). [85]

Likewise, the PwC "sameness" attestation at best simply ports the errors and the omissions of the underlying KPMG test from Virginia into the District of Columbia. That is, if the OSS functions well in Virginia, PwC says it will function well in the

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83 Tr. 260-262. *See also* AT&T Cross Exhibit 1, Federal Communications Commission, WC Docket No. 02-214, Joint Reply Declaration of Kathleen McLean, Raymond Wierzbicki, and Catherine T. Webster (September 12, 2002), at ¶ 56.

84 Tr. 262. *See also* Joint Exhibit 1, MD Tr. 1312-1313 (Cross-examination of KPMG).

85 Tr. 262-265.

District of Columbia. But by the same token, if it misfires in Virginia, it will also misfire in the District of Columbia.[86]

Moreover, although there is substantial commonality between the OSS in the Verizon ex-C&P states, there is also some degree of difference. In Maryland there was evidence of as much as 20 to 30 percent difference between the Virginia and Maryland OSS.[87] While it is not clear that the same differences would apply to the District of Columbia OSS, the Commission should take no undue risks in this regard. In addition, the metrics currently in effect for the District of Columbia are not the same metrics that were tested in Virginia. For these reasons, there is little assurance that the results of the OSS test by KPMG in Virginia still hold value in the District of Columbia today.

Finally, changes in Verizon's workforce supporting wholesale operations may impact Verizon's ability to provide nondiscriminatory OSS. Since the end of the Virginia test Verizon has announced it will be reducing its work force by 10,000 jobs, which provides this Commission little comfort that Verizon DC will be able to accurately and timely process future mass market order volumes.[88] Indeed, it appears that a disproportionate amount of the reduction in force is being borne by Verizon's wholesale services operations. About 1000 of those reductions – fully 10% of the total -- will affect Verizon's wholesale support functions, which are being reduced from approximately 11,000 to 10,000 personnel, about a 9% reduction in wholesale services staffing.[89]

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86 Tr. 199-200.

87 Joint Exhibit 1, MD Tr. 1338-1344 (Cross-examination of KPMG).

88 *See* http://www.newsday.com/business/ny-bzveri052611205mar05.story?coll=ny%2Dbusiness%2Dutility.

89 Verizon WV Response to AT&T Discovery Request 6-5.

Replication of the C2C metrics results reported by Verizon DC will help to ensure that Verizon's OSS functions in a nondiscriminatory manner, as required by the Act. In Virginia, the Commission's Staff obtained Verizon and KPMG assistance in the Virginia Staff's replication effort. In the Maryland 271 proceedings, Verizon agreed to assist the Maryland Staff with replication efforts and was willing to discuss possible KPMG help at Verizon's expense, as was done in Virginia.[90] The District Staff should be in no worse position than the Virginia and Maryland staffs with respect to the ability to replicate the metrics results reported by Verizon.

However, replication will not be successful unless the Staff has at its disposal the complete set of metrics business rules that will be required, without more, to duplicate Verizon's results. The metrics business rules are the documentation containing the specific rules to be used by Verizon in the implementation of the C2C Guidelines.

The Virginia Commission Staff ran into substantial difficulties with its replication efforts in Virginia and required considerable assistance from Verizon and KPMG, as often as on a daily basis.[91] In part at least, this is because the metrics business rules were not required to be published in Virginia, unlike in New Jersey, requiring recourse by the Staff to unpublished information in order to be able to successfully replicate Verizon's metrics results. The problems included updates and changes to the algorithms or test IDs that were not communicated to the Virginia Staff,[92] and incomplete data and subsequent

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90 Joint Exhibit 1, MD Tr. 1322-1327.

91 Joint Exhibit 1, MD Tr. 1317-1321. (Virginia 271 Tr. at 1255).

92 Joint Exhibit 1, Virginia 271 Exhibit 101 at 3.

changes to data that were not published.[93] The Virginia Staff received special Change Control Records ("CCRs") that included "additional information necessary for Staff's replication project."[94]

The publication of the full set of business rules is important not just to assist the Staff in replicating Verizon's metrics results, but also to allow the CLECs to engage in such replication. But the special CCRs are not published or available to CLECs. If a CLEC wished to check Verizon's numbers it apparently could not do so successfully using just the CCRs submitted pursuant to the C2C guidelines. The CLEC would need the special CCRs that the Virginia Staff received, but ironically would not be able to get them because the additional information is allegedly proprietary.[95]

That is inconsistent with the very purpose of the Change Control provisions of the C2C Guidelines, which are intended to be complete and timely descriptors of changes to the metrics, sufficient to allow replication without more. KPMG itself conceded that it had to rely on undocumented non-public information from Verizon subject matter experts in order to synchronize KPMG's metrics replication effort, and keep that effort synchronized over time.[96]

As a condition of any Commission endorsement of Verizon's § 271 application, this Commission should require Verizon DC to assist its Staff in whatever way is required to allow the Staff to replicate Verizon DC's C2C metrics results in the District of Columbia, including third party assistance if needed. To assist the replication effort,

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93 Joint Exhibit 1, Virginia 271 Tr. at 1257-1258.

94 Joint Exhibit 1, Virginia 271 Exhibit 101 at 4.

95 Joint Exhibit 1, Virginia 271 Tr. at 961-963.

and equally important to allow CLECs themselves to replicate Verizon's metrics results, the Commission should also require, as a pre-condition of any endorsement of Verizon's § 271 application to the FCC, that Verizon publish the full set of metrics business rules that will be needed for successful replication.

J. Verizon Should be Required to Explicitly Commit That It Will Not Challenge the Commission's Authority to Adopt, Enforce, or Modify the Performance Assurance Plan ("PAP") Pursuant to the Change Provisions of the PAP.

Verizon's commitment to the PAP it has filed in the District of Columbia is less than certain after it achieves interLATA long distance authority from the FCC, because Verizon reserves the right to challenge what it perceives to be Commission's lack of authority to impose a performance assurance plan on Verizon DC.[97] This is so despite the fact that Verizon has agreed to the change provisions incorporated into the PAP itself. The PAP incorporates three specific change provisions to which Verizon has purportedly "voluntarily" agreed. These change provisions are (1) the annual review by the Commission, (2) the importation of changes from the New York Carrier Working Group, and (3) "other changes" suggested by the Commission, Verizon or any CLEC at any time.[98]

This means that the Commission has no assurance whatsoever that the PAP filed by Verizon will survive Verizon's entry into the District of Columbia interLATA long distance market, and that the market will remain open to competition. Verizon's

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96 Joint Exhibit 1, Virginia KPMG Workshop transcript at 445-446.

97 Tr. at 45-46 (Canny).

98 DC PAP at ¶¶ II.K.1 through II.K.3.

agreement to the change provisions incorporated into the PAP itself does not temper Verizon's reserved right to challenge the Commission's authority to adopt, enforce or modify the PAP, as was clarified in Ms. Canny's testimony, cited above. Ms. Canny made abundantly clear that Verizon believes it can challenge on jurisdictional – or any other -- grounds any changes that Verizon did not agree with, made pursuant to the very same change provisions incorporated in the PAP to which Verizon DC has agreed.

Even beyond that, Verizon reserves the right to challenge the Commission's jurisdiction to order changes to the PAP arising out of the Commission's review of Verizon's performance during the thee-month "dry run" implementation period that the Commission ordered with respect to the PAP.[99] By Order 12451 in Case No. 990, the Commission required Verizon DC to collect and report data for a three-month period before incentive payments to the CLECs kick in.[100] The Commission stated that it would review Verizon DC's reports, and specifically with respect to late, incomplete or incorrect reports, would "monitor Verizon DC's PAP performance reports carefully during the three-month implementation period," with a view to seeking modifications to the PAP if necessary.[101] Verizon would challenge any such revision it did not agree with, and thus threatens the Commission's efforts to ensure a District market open to competition before that open market has a chance to take root.

Verizon's potential challenges to the Commission's authority to amend the PAP in ways that Verizon does not agree with is in direct contravention to the important role

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99 Tr. at 46-48 and 52-53.

100 Formal Case No. 990, *In The Matter Of Development Of Local Exchange Carrier Quality Of Service Standards For The District*, Order No. 12451 (September 9, 2002), at ¶ 137.

101 Order No. 12451 at ¶¶ 137, 146.

that the PAP plays in ensuring continually open local exchange markets in the District of Columbia. The FCC relies upon state commissions' active oversight of incentive plans such as the PAP, and the commissions' modification of such plans as may be necessary to meet changing requirements, to assure itself that markets within the state remain open to competition.[102] Absent such oversight and adjustments to the PAP by the Commission as needed, there can be no assurance that the District of Columbia local exchange market is or remains irreversibly open to competition.

Verizon's potential challenge to the District of Columbia PAP after 271 entry is not merely a conjectural concern, given recent developments in New Jersey. Verizon's affiliate in New Jersey expressly relied on the PAP there as evidence of its compliance with Section 271 (Tr. 50 (Canny)), and consequently gained Section 271 approval in June 2002.[103] Just three months later Verizon challenged in court the New Jersey Board of Public Utilities' imposition of parts of the New Jersey performance incentive plan on the basis, *inter alia*, that the Board lacks the authority to impose such a plan. Tr. 49-50 (Canny).[104]

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102 *See*, e.g., *In the Matter of Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Jersey*, Memorandum Opinion and Order, WC Docket No. 02-67, June 24, 2002, at ¶176 ("The [Incentive Plan], in combination with the New Jersey Board's active oversight of the IP and its stated intent to undertake a comprehensive review to determine whether modifications are necessary, provides additional assurance that the market will remain open").

103 Federal Communications Commission, WC Docket No. 02-67, Memorandum Opinion and Order (June 24, 2002)("New Jersey 271 Order").

104 Superior Court of New Jersey, Appellate Division, Docket No. A-576-02-T2, Brief on Behalf of Verizon New Jersey Inc. in Support of its Motion for a Stay, filed September 27, 2002, at 15-20. Verizon also challenged the New Jersey Board's Incentive Plan revisions on procedural and due process grounds, *Id.* at 20-34.

The order of the Board that Verizon NJ seeks to stay and eventually overturn was adopted on March 28, 2002, long before Verizon NJ obtained its 271 authority in that state – indeed, before Verizon NJ filed its second application with the FCC for 271 authority in New Jersey. Nowhere in that second application did Verizon NJ say that it would not comply with any part of the Board's performance incentive plan, including that part of it modified by the Board's March 28, 2002 Order (Tr. 50-51 (Canny)). The March 28, 2002 Order modified certain provisions of the New Jersey incentive plan pertaining to the filing of accurate and timely performance reports and the refiling of corrected reports in a timely manner. These are the same concerns expressed by this Commission in Order No. 12451, that led it to find it necessary to carefully monitor Verizon DC's reports under the PAP during the implementation period.

It is obvious that there is a serious potential for similar claims against this Commission, in the event that the Commission were to decide that it would be in the best interests of the District of Columbia public to make revisions to the PAP that Verizon did not agree with. Such claims would in themselves pose a serious threat to competition in the District of Columbia and, by definition, foreclose a finding that the District's local markets are irreversibly open to competition. Even a potential future claim challenging the Commission's authority to impose self-executing remedies threatens competition and assures that such competition will remain reversible, contrary to the requirements of § 271 of the Act.

Self-executing remedies such as the PAP are a primary regulatory tool which, if aggressive enough, can prevent backsliding and the reversal of competitive development by Verizon. The PAP provides incentives for Verizon to treat its wholesale customers the same as it treats its own retail services. Such parity of treatment is critical to the development of competition in the District of Columbia local exchange market. Verizon itself recognizes the important role that effective PAP provisions play in the competitive process and that the proposed PAP for the District of Columbia is an essential part of Verizon's application before this Commission (Tr. 50 (Canny)). Verizon's claim of veto power over remedies thus threatens the very fabric of the 271 process and the Commission's oversight authority.

This Commission should not support Verizon DC's 271 application before the FCC unless Verizon DC affirmatively waives any future legal challenge to the PAP and PAP revisions premised on the Commission's lack of authority to impose or revise the PAP.[105]

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105 AT&T is not suggesting that Verizon waive all rights to challenge future revisions to the PAP. AT&T's position is only that Verizon waive any challenge to the adoption of the PAP that Verizon relies on to buttress its 271 application in the District of Columbia, and revisions to the PAP under the PAP's change provisions or the provisions of Order No. 12451, that is based on the Commission's authority or lack thereof.

CONCLUSION

Before the Commission considers endorsing Verizon DC's 271 application it should first direct Verizon to lower its UNE rates to the levels recommended by AT&T and require Verizon to complete the remaining list of tasks necessary to bring meaningful local exchange competition to the District residential consumers who desperately need it. (see pp. 2-3; Sections B through I, *infra.)* The Commission should not accept mere promises from Verizon that it will 'fix" its problems at some unspecified point in the future. Rather, the Commission should require, in its order in this proceeding, that Verizon provide a firm and hard commitment to each of the action items AT&T has identified in this brief. Unless and until Verizon makes those commitments, this Commission should not endorse Verizon's 271 application to the FCC.

Respectfully submitted,

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